IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 298 OF 1993

The Union of India
Owning and Representing the
Central Railway ... Appellant

V/s

1.Smt.Niruben widow of
Ashokkumar Koisa & Others ... Respondents

Shri A.N. Samant for appellant

Shri G.V.Nagarsheth for respondents

Coram : D.G. Deshpande, J.

Date : 15th February,2005

P.C.

1 Heard the learned counsel for appellants and respondents.

2 The suit came to be filed at the instance of respondents before City Civil Court at Mumbai being L.C.Suit No.7062 of 1984 claiming the compensation of Rs.50000/- in respect of accident occurred on 5.1.1982 in between Currey Road and Parel which resulted into death of Ashokkumar, husband of respondent No.1 and father of

respondents No.2 to 4.

3 The City Civil Court at Bombay granted relief by passing a decree as prayed. Hence, this appeal.

4 The learned counsel for appellant contends that none of witness on behalf of respondents have been claimed personal knowledge regarding the actual accident took place and, therefore, according to him, a fact of negligence could not be said to have been proved. A burden of which was on plaintiffs/respondents. Secondly, while awarding the compensation of Rs.50000/- the lower court did not take notice of fact that the deceased was an unemployed youth and he came to Bombay in search of job. Therefore, according to him, alternatively the compensation awarded by the lower court is at higher scale.

5 The lower court while arriving at conclusion about liability of railway has taken into consideration Exhibit E. Copy of which has given to me by Mr.Samant,learned counsel for appellants. Exhibit E report prepared in respect of accident occurred between Currey Road and Parel between 6.00 p.m. to 10.00 p.m. on 5.1.1982. The husband of appellant Ashokkumar Koisa died on above said date at the very spot between 600 p.m. to 10.00 p.m. and, therefore, the said report came to be prepared and produced. In para-10 of the said report it is stated as under.

" over a clockwise bend , fast north bound over-crowded train, might result in pushing out some hanging on passengers towards the left".

There is also mention in para-8 of the said report, a statement of one Basu who was injured and that some blund object was pressed against him at his hip. The learned trial court after taking into consideration the report (Exhibit A)has come to the conclusion that the spot in question was found well fortified on both east and west side and, there was no possibility of any persons coming from outside to railway tracks. Considering this aspect the death of six person on the same date i.e. 5.1.1982 between 6.00 p.m. to 10.00 p.m. at the same accident spot, a fact that no persons could have come to railway tracks from outside and a distance between two trains are passing through curved and bended railway tracks is three and half feet. The accident was occured due to negligence of the railway. The learned counsel for appellants submits that it was the responsibility and onus of plaintiff to prove the negligence of the railway and since none of witnesses have personal knowledge about the accident occurred, they did not discharge their burden. However, the learned trial court has repeatedly held that accident of this type occurred, it was for the railway to prove what was the

actual circumstance which laid to accident on that particular date. I do not find any perversity in the judgment of the learned trial court and, atherefore, no interference require in the findings of the learned trial court about the liability of the railway.

So far as quantum is concerned, the contention of the learned counsel for appellants is required to be taken into consideration. Admittedly,The deceased had no employment. He had no source of income. He had come to Bombay for seeking employment. He had no source of income.He had come to Bombay in search of job but unfortunately he died in the said accident. In the circumstances, a claim of Rs.50000/- should not have been allowed by this court. Therefore, I pass following order.

ORDER

Appeal is partly allowed.

Rs.50000/- awarded by the learned trial court is reduced to Rs.40000/-.

As per the directions of this Court the appellants had deposited Rs.51500/- at the time of admission of the appeal with the Registrar of this court. Therefore, the Registrar to calculate the interest on this amount.

Since the respondents No.2 to 4 have become major, they will deal with awarded compensation equally amongst

respondents No.1 to 4 after deducting Rs.10000/- to be paid to the railway.

Rs.10000/- principle amount with corresponding interest accumulated from the date of deposit till today will be returned to the railway.

Registrar to deduct amount of court fees as per rule as on the date of accident from the amount payable to the respondents.

Certified copy is expedited.

(D.G.Deshpande,J.)